

The Washington Post

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Nov. 21, 2016

U.S. Fleet Forces Command
FOIA Coordinator
Code N01P
1562 Mitscher Avenue
Suite 250
Norfolk, VA 23551-2487

Via email, foia-pa.fct@navy.mil

Dear FOIA Officer,

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, for copies of records of disposition and accountability actions by the Commander, Fleet Forces Command, ADM Philip Davidson, while acting as the Consolidated Disposition Authority (CDA) for matters related to Glenn Defense Marine Asia (GDMA). The records I am seeking include, but are not limited to, the following:

- Records of any criminal charges filed under the Uniform Code of Military Justice related to Glenn Defense Marine Asia, including charge sheets and records of courts-martial.
- Records compiled, generated or collected by the CDA or his staff concerning Navy personnel – active-duty or since retired – who have received non-judicial punishment (NJP), punitive censure (such as letters of censure, admonition or reprimand), non-punitive administrative measures (such as non-punitive letters of censure, caution or concern), or records of counseling. Please include records of any other adverse forms of administrative action.
- Letters, memoranda or other correspondence from the CDA or his staff -- including Michael McGregor, the command general counsel, and Capt. Gary Sharp, the fleet judge advocate general – notifying Department of Navy personnel or their attorneys of the CDA's consideration or intent to impose non-judicial

punishment, punitive censure, non-punitive administrative measures or other forms of adverse administrative action.

- Staff judge advocate recommendations (SJARs), fleet judge advocate recommendations, or general counsel recommendations regarding the disposition or handling of cases by the CDA.
- Correspondence, emails, memoranda, reports, databases, spreadsheets or PowerPoint presentations that summarize or track CDA cases related to Glenn Defense Marine Asia, including their status, handling and outcome. Please include any correspondence, emails, memoranda, reports, databases, spreadsheets or PowerPoint presentations that the CDA -- or his staff -- have addressed to, or shared with, other Navy officials or Department of Justice officials
- Closed Reports of Investigation (ROIs) from the Naval Criminal Investigative Service (NCIS) or the Defense Criminal Investigative Service (DCIS) concerning Department of Navy personnel who had interactions with Glenn Defense Marine Asia or GDMA executives or employees. Specifically, I am seeking closed Reports of Investigation regarding individuals whom the Department of Justice has declined to prosecute and whose cases have been referred to the CDA for consideration and disposition. Given that the Justice Department has already declined to prosecute individuals in such cases, disclosure of the closed Reports of Investigation from NCIS or DCIS would not interfere with ongoing law-enforcement investigations. The mere fact that other, separate GDMA cases may be active or ongoing is not sufficient justification to withhold closed Reports of Investigation concerning Navy personnel who had contact with GDMA.

If you regard any of these records as exempt from disclosure under the Act, I hereby request that you exercise your discretion to disclose them. As you know, in his January 2009 Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, President Obama directed federal officials to administer the FOIA with “a clear presumption: In the face of doubt, openness prevails.” The President specifically ordered federal officials not to withhold information “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”¹

If you deny this request in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the Act, and that you provide all non-exempt portions that are reasonably segregable. As you know, in his March 2009 Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, Attorney General Eric Holder directed federal officials to make discretionary releases when appropriate and partial disclosures of records when full disclosures are not possible.² In addition, under the FOIA Improvement Act of 2016, agencies are required to

¹ <https://www.whitehouse.gov/the-press-office/transparency-and-open-government>

² <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>

“take reasonable steps necessary to segregate and release nonexempt information” and must “consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible.”³

I further request that you disclose the listed documents, as they become available to you, without waiting until all the documents have been assembled.

There is a clear, compelling and strong public interest in disclosure of these records that greatly outweighs any potential privacy concerns. The courts have consistently and forthrightly held that the public interest favors disclosure in cases that shed light on misconduct by government officials. In *Columbia Packing Co. v. U.S. Department of Agriculture* (1977), the First Circuit upheld an order to disclose under FOIA the personnel records of two former federal meat inspectors who had been convicted of taking bribes from meat-packing firms, noting that “the public has an interest in whether public servants carry out their duties in an efficient and law-abiding manner.”⁴ In *Cochran v. United States* (1985), the 11th Circuit held that “the balance struck under FOIA exemption six overwhelming[ly] favors the disclosure of information relating to a violation of the public trust by a government official, which certainly includes the situation of a misuse of public funds or facilities.”⁵ Although the official misconduct in *Cochran* concerned a relatively small amount of money misappropriated by a general officer in the U.S. Army, the 11th Circuit stated that “information relating to a misappropriation of government funds, in whatever amount, by a high level government official qualifies as a textbook example of information the FOIA would require to be disclosed to the press.” In *Chang v. Department of the Navy* (2004), the court found that while information regarding a non-judicial punishment (NJP) proceeding is “generally not releasable,” such information should be disclosed pursuant to a FOIA request when “the facts leading to a nonjudicial punishment are particularly newsworthy.”⁶

There is simply no doubt that any information regarding the Glenn Defense Marine case is newsworthy – particularly records that would identify Navy personnel whose conduct has been officially called into question. With more than 200 people under scrutiny, and a sordid record of misconduct that unfolded over more than a decade, the Glenn Defense Marine Asia scandal has become an ethical morass of epic proportions for the U.S. Navy.⁷ The Washington Post has published more than three-dozen news articles about the case since the first Navy and GDMA officials were arrested in 2013. Senior Navy and Justice Department officials have emphasized the gravity of the offenses and the unprecedented scope of the misconduct. At an Oct. 14, 2016 sentencing hearing in U.S. District Court in the Southern District of California, Assistant U.S. Attorney Brian R. Young called the scandal “easily one of the biggest fraud and corruption schemes in the history of the Navy.” At the same hearing, NCIS Director Andrew Traver called it “the

³ <https://www.congress.gov/114/plaws/publ185/PLAW-114publ185.pdf>

⁴ *Columbia Packing Co. v. U.S. Department of Agriculture*, 563 F.2d 495 (1st Cir. 1977)

⁵ *Cochran v. United States*, 770F.2d 949 (11 Cir. 1985)

⁶ *Chang v. Department of the Navy*, 314 F. Supp. 2d 35, 44 (D.D.C. 2004)

⁷ Whitlock, Craig; “The Man Who Seduced the 7th Fleet,” p. A01, The Washington Post, May 29, 2016

most significant case that has impacted the Navy” and “arguably the largest fraud case that our agency has ever been involved in.”⁸ In a report to the 2015 Annual Meeting of the American Bar Association, Vice Adm. J.W. Crawford III, the U.S. Navy Judge Advocate General, called the Glenn Defense Marine Asia case “the largest, most comprehensive fraud and corruption investigation in the history of the U.S. Navy.”⁹

While the Justice Department has filed criminal charges against 16 defendants in the federal civilian courts, the Navy has largely failed to uphold its pledges to keep the public informed about military investigations into GDMA and its efforts to hold Department of Navy personnel accountable for wrongdoing. In a Dec. 20, 2013 news conference at the Pentagon, Navy Secretary Ray Mabus announced the establishment of the Consolidated Disposition Authority for GDMA cases and pledged that the Navy would not sweep matters under the rug.¹⁰ “The Navy has a long tradition of transparency when we uncovered allegations of misconduct, particularly against high-ranking officers, because not only can the spotlight act as a deterrent, but mostly because it's the right thing to do. I would rather get bad headlines than let bad people get away,” Mabus said. Since then, however, the Navy has released information about only three cases – regarding flag officers who received secretarial letters of censure in February 2015 for taking gifts from Leonard Glenn Francis, the GDMA president.¹¹ The Navy’s Office of the Chief of Information (CHINFO) has repeatedly rejected multiple requests by the Washington Post to disclose information about any other cases handled by the CDA. Despite Secretary Mabus’s promise of transparency, the Navy appears more intent on protecting the reputations of personnel caught up in the investigation than in holding them publicly accountable.

I am also seeking expedited processing of this request for records. As a journalist for The Washington Post, I am primarily engaged in disseminating information to our worldwide readership. Further, the records I am seeking are urgently needed in order to inform the public concerning government activity, specifically regarding military officials who have committed misconduct as part of their official duties.

Developments in the Glenn Defense Marine Asia investigation have led to a steady stream of breaking news articles in The Washington Post since 2013. Over the past three years, this reporter personally has written nearly 30 articles about the case, including numerous front-page stories (see Exhibit A, attached). A delay in releasing records from the Consolidated Disposition Authority would undermine public confidence in the Navy’s ability and willingness to fairly and thoroughly investigate allegations of misconduct.

⁸ Transcript, Sentencing Hearing, U.S. v. John Beliveau Jr., 13-CR-3781-JLS, U.S. District Court for the Southern District of California, Oct. 14, 2016

⁹ <http://www.jag.navy.mil/documents/ABAreport2015.pdf>

¹⁰ <http://archive.defense.gov/transcripts/transcript.aspx?transcriptid=5346>

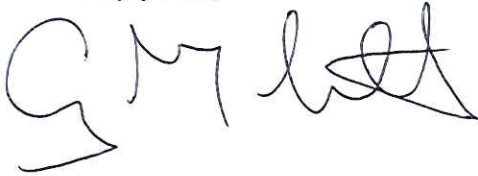
¹¹ http://www.navy.mil/submit/display.asp?story_id=85569

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

For purposes of FOIA fee assessments, I request that you waive all fees in the public interest. The furnishing of the information sought by this request is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. If, however, you decline to waive all fees, I am prepared to pay your normal fees for news media requesters. Please notify me if you expect the processing fees to exceed \$100.

If I can answer any questions or be of further assistance, please do not hesitate to contact me at 202-334-9587 (office) or by email at craig.whitlock@washpost.com. As the FOIA requires, I look forward to your response within twenty (20) working days.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Craig Whitlock', written in a cursive style.

Craig Whitlock
Staff writer

Exhibit A

- 1) "Retired Navy Captain Latest to Admit Accepting Bribes From 'Fat Leonard,'" p. A09, The Washington Post, Nov. 16, 2016.
- 2) "Former NCIS Agent Gets 12-Year Term for Role in Vast Navy Bribery Scandal," p. A03, The Washington Post, Oct. 15, 2016.
- 3) "Another Defendant Admits Guilt in Vast Navy Scandal," P. A02, The Washington Post, June 24, 2016
- 4) "Admiral Pleads Guilty in Scandal," p. A01, The Washington Post, June 10, 2016
- 5) "The Man Who Seduced the 7th Fleet," p. A01, The Washington Post, May 29, 2016
- 6) "Three More Navy Officials Charged in Mushrooming 'Fat Leonard' scandal," p. A03, The Washington Post, May 28, 2016
- 7) "Top Navy Officer to Push for a Recommitment to 'Values'," p. A03, The Washington Post, May 19, 2016
- 8) "After Fairy-Tale Career, Naval Officer Sentenced in Bribery Scandal," p. A03, The Washington Post, April 30, 2016
- 9) "Navy Moves for New Intelligence Chief," p.A05, The Washington Post, April 2, 2016.
- 10) "Captain is Sentenced in Navy Scandal," p. A02, The Washington Post, March 26, 2016.
- 11) "Navy Officer Gets 40 Months in Sex-for-Secrets Scandal," p. A07 The Washington Post, Jan. 30, 2016
- 12) "For Navy's Intelligence Chief, a Lack of Clearance," p. A01, The Washington Post, Jan. 28, 2016
- 13) "Sailor's Bribery Case Shows Ease of Stealing Navy secrets," p. A04, The Washington Post, Jan. 22, 2016
- 14) "Three Admirals Rebuked in 'Fat Leonard' Bribery Probe," p. A07, The Washington Post, July 18, 2015
- 15) "Another Navy Officer Pleads Guilty in 'Fat Leonard' Scandal," p. A12, The Washington Post, April 16, 2015
- 16) "Three Navy Admirals Censured for Bribery," p. A16, The Washington Post, Feb. 11, 2015
- 17) "Contractor in Navy Scandal Starts Helping Investigators," p. A04, The Washington Post, Feb. 5, 2015
- 18) "Contractor Pleads Guilty in Widening Navy Scandal," p. A01, The Washington Post, Jan. 16, 2015
- 19) "Navy Contractor Likely to Plead Guilty in Bribe Case," p. A06, The Washington Post, Jan. 15, 2015
- 20) "Navy Officer Pleads Guilty in Kickback Case," p. A15, The Washington Post, July 4, 2014
- 21) "House Panel Probing Navy Bribery and Fraud Scandal," p. A10, The Washington Post, Jan. 31, 2014
- 22) "Navy Bribery Scandal Expected to Widen," p. A02, The Washington Post, Dec. 21, 2013

- 23) "NCIS Agent in Navy's 'Fat Leonard' Scandal to Plead Guilty," p. A09, The Washington Post, Dec. 13, 2013
- 24) "Navy Work Kept Going to Fumbling Contractor," p. A01, The Washington Post, Dec. 5, 2013
- 25) "7th Navy Official Suspended in Probe," p. A12, The Washington Post, Nov. 22, 2013
- 26) "Admirals Named in Bribery Probe," p. A01, The Washington Post, Nov. 9, 2013
- 27) "Moles Inside Navy Aided Huge Fraud, Officials Say," p. A01, The Washington Post, Nov. 8, 2013
- 28) "Third Navy Official is Charged in Bribery Probe," p. A18, The Washington Post, Nov. 7, 2013
- 29) "Bribery Scandal Unfolding as a Big Scandal for the Navy," P. A01, The Washington Post, Oct. 20, 2013